

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION (YOUNGSTOWN)

DELBERT REEDER, etc.,	)	CASE NO. 4:03 CV 1911
	)	
Plaintiff,	)	JUDGE ECONOMUS
	)	MAGISTRATE JUDGE LIMBERT
v.	)	
	)	<b><u>CMC STATEMENT OF FACTS</u></b>
CENTOCOR, INC.,	)	<b><u>AND LEGAL ISSUES</u></b>
	)	
Defendant.	)	

Defendant Centocor, Inc. ("Centocor"), by and through counsel and pursuant to the Court's Case Management Conference ("CMC") Scheduling Order, submits the following statement of facts and legal issues.

Plaintiff filed this product liability/wrongful death action on August 1, 2003 in the Mahoning County Court of Common Pleas, which Centocor subsequently removed to this Court on September 11, 2003. Because Centocor has not yet received or reviewed the decedent's medical records, its knowledge of the factual background to Plaintiff's claims is limited to the allegations in the Complaint.

Plaintiff alleges that the decedent, Carol Reeder, ingested Remicade® under physician supervision from June 14, 2001 through July 27, 2001. (Complaint, ¶ 3). Remicade® is a monoclonal antibody indicated for the treatment of Crohn's disease and rheumatoid arthritis.

Plaintiff does not state why Reeder's physician prescribed Remicade® infusions, but alleges that on August 3, 2001, Reeder developed "a reaction to the Remicade and/or a massive infection" resulting in her August 12, 2001 death. (*Id.*, ¶ 4).

Plaintiff Delbert Reeder is the Executor of the Estate of Carol Reeder, and brings this action on behalf of the Estate, himself, and Reeder's next of kin. He asserts claims for: 1) defect in design/inadequate warning or instruction (First Cause of Action, ¶¶ 5-11); 2) negligence (manufacture, sale, testing, labeling, pre-marketing and post-marketing warnings, quality assurance, quality control, distribution, and advertising) (Second Cause of Action, ¶¶ 12-16); 3) punitive damages (pre-marketing and post-marketing warnings, failure to recall) (Second Cause of Action, ¶ 18); 4) defect due to nonconformity with express representation (Third Cause of Action, ¶¶ 19-22); 5) intentional misrepresentation based on failure to conform to express representations (Fourth Cause of Action, ¶¶ 23-26); and 6) negligence based on false representation (Fifth Cause of Action, ¶¶ 27-31).

Centocor filed its Answer to Plaintiff's Complaint on September 15, 2003. Affirmative defenses include: 1) superseding and/or intervening cause; 2) assumption of risk; 3) compliance with all applicable government standards; 4) the learned intermediary doctrine; and 5) misuse.

Because Centocor has not yet received or reviewed Plaintiff's medical records and no formal discovery has taken place, it cannot identify specific disputed facts or refine the legal issues at this time.

Respectfully submitted,

s/ Kristen L. Mayer  
ROBERT C. TUCKER (0013098)  
rtucker@tuckerellis.com  
KRISTEN L. MAYER (0055505)  
kmayer@tuckerellis.com  
TUCKER ELLIS & WEST LLP  
1150 Huntington Building  
925 Euclid Avenue  
Cleveland, OH 44115-1475  
Telephone: 216.592.5000  
Telefax: 216.592.5009

Attorneys for Defendant Centocor, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2003, a copy of the foregoing **CMC Statement of Facts and Legal Issues** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

William Hawal  
Rhonda Baker Debevec  
Spangenberg, Shibley & Liber, LLP  
2400 National City Center  
1900 East Ninth Street  
Cleveland, Ohio 44114-3400

Attorneys for Plaintiff

s/Kristen L. Mayer  
ROBERT C. TUCKER (0013098)  
rtucker@tuckerellis.com  
KRISTEN L. MAYER (0055505)  
kmayer@tuckerellis.com  
TUCKER ELLIS & WEST LLP  
1150 Huntington Building  
925 Euclid Avenue  
Cleveland, OH 44115-1475  
Telephone: 216.592.5000  
Telefax: 216.592.5009

Attorneys for Defendant Centocor, Inc.